

DOCKET NO.: IVBU-0124
Application No.: 10/609,426
Advisory Action Dated: Sep. 5, 2007

**PATENT
PETITION FILED UNDER
37 CFR § 1.181**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

**Richard T. Oesterreicher and Craig
Murphy**

Confirmation No.: **7950**

Application No.: **10/609,426**

Group Art Unit: **2143**

Filing Date: **June 27, 2003**

Examiner: **Joseph E. Avellino**

For: **SYSTEM AND METHOD FOR DIGITAL MEDIA SERVER LOAD
BALANCING**

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 CFR § 1.181 REQUESTING ENTRY OF AMENDMENTS
SUBMITTED AFTER FINAL REJECTION**

Applicants request entry of the amendments submitted in Applicants' response dated July 9, 2007.

As indicated in the advisory action dated Sep. 5, 2007, the proposed amendments were not entered because they allegedly raise new issues that would require further consideration and/or search.

However, the amendments of July 9, 2007 merely incorporated subject matter from various dependent claims into the respective independent claims. Therefore, the amendments do not raise new issues that would require further consideration and/or search, and moreover the amendments place the application in better form for appeal by materially reducing the issues for appeal.

While the rejection of the dependent claims containing the subject matter of the amendment was based on "official notice," Applicants note that their challenge to the use of "official notice" should not require additional consideration and/or search on the part of the

DOCKET NO.: IVBU-0124
Application No.: 10/609,426
Advisory Action Dated: Sep. 5, 2007

**PATENT
PETITION FILED UNDER
37 CFR § 1.181**

Examiner. This is because "official notice" should be "capable of such instant and unquestionable demonstration as to defy dispute." MPEP 2144.03. It is logically inconsistent for the Patent Office to assert that facts underlying a rejection are capable of "instant and unquestionable demonstration," while they also require "further consideration and/or search."

Applicant believes no fee is required in filing this petition. However, should there be such a fee the Director is hereby authorized to charge any related fees to Deposit Account number 23-3050, in connection with this filing or any future filing submitted to the U.S. Patent and Trademark Office in the above-identified application during the pendency of this application.

Respectfully submitted,

Date: September 24, 2007

/Nathaniel Gilder/

Nathaniel Gilder
Registration No. 53,233

Woodcock Washburn LLP
Cira Centre
2929 Arch Street, 12th Floor
Philadelphia, PA 19104-2891
Telephone: (215) 568-3100
Facsimile: (215) 568-3439